

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)

CC Docket No. 94-129

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REPLY TO OPPOSITION

MCI Telecommunications Corporation (MCI) hereby replies to the opposition filed by AT&T Corp. (AT&T) in response to MCI's petition for limited reconsideration of the Commission's decision in Policies and Rules Concerning Unauthorized Changes and Consumers' Long Distance Carriers, CC Docket No. 94-129, FCC-95-225, Report and Order, rel. June 14, 1995 (Report and Order). Contrary to AT&T's assertions therein, MCI has demonstrated that, in view of widespread industry abuse and consumer confusion concerning LOAs cast in the form of check payments, the Commission should outlaw that marketing approach altogether.

MCI agrees with the consensus among governmental and other organization commenters who process consumer complaints that LOA check payment abuses are a significant industry problem.¹ The Commission's own records, evidence submitted by other parties, and newspaper articles reveal on-going and widespread problems

¹ See the Comments of the State of New York Department of Public Service, at 2; Comments of the National Association of Attorneys General (NAAG) (at 2), representing attorneys general in twenty states; and Comments of Consumer Action, at 2.

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with misleading LOA check use.² Specifically, over ten percent of the Commission's recent complaints are directly related to problems with LOA check payments, hardly the insignificant problem that AT&T suggests.³ Moreover, in only a few months during 1994, one carrier used check payments to convert without authorization more than 300,000 consumers and collected more than \$13 million.⁴

While AT&T attempts to create an impression that these unauthorized conversions were isolated -- and the sole responsibility of a single carrier⁵ -- the facts are that a number of other carriers have systematically abused LOA check

² Articles showing the LOA check problem: "Careful, They've Got Your Number," Newday, February 5, 1995, at A05; "Dial 'T' for Trouble; Carriers Weave a Tangled Web. Sidebar: How to Protect Yourself," Newsday, May 22, 1995, at A05; "FCC 'Slams' Back New Rules Protecting Against A Switch in Service," Newsday, June 13, 1995, at A08; "Slamming Scourage: Stealing of Customers Spreads with Resellers of Telephone Service," The Wall Street Journal, July 26, 1995, at 1; "Tighter Ban on Phone Ruses Urged," The Baltimore Sun, August 15, 1995, at 1A; "Crackdown on Phone Service Switching Sought," Los Angeles Times, August 15, 1995, at 1; "States Seek Tough Rules on 'Slamming,'" The Phoenix Gazette, August 15, 1995, at B06.

³ December 30, 1994 letter from Gregory A. Weiss, FCC, to Peter H. Jacoby, AT&T re: FOIA Control No. 94-400. While AT&T does not disagree with this estimate, it apparently takes issue with MCI's characterization of the LOA check problem as "significant." (AT&T Opposition at 6.) As the December 30, 1994 letter shows, 47 out of 430 informal complaints the Commission sampled in response to a Freedom of Information Request by AT&T were complaints about LOA checks. This is an amount greater than 10 percent, which it is entirely fair to characterize as significant.

⁴ NAAG Petition at 3.

⁵ AT&T Opposition, at 6-7.

payment practices to disadvantage consumers. For example, a carrier last year "flooded" the New York Metropolitan Transportation Authority (MTA) with check offers, creating a huge administrative burden for officials who attempted to prevent the checks from being cashed.⁶ In light of the record information presented by MCI and others, AT&T's conclusion that no "infirmity in the Commission's decision" has been demonstrated is without merit.⁷

According to AT&T, the Commission's revised antislamming rules will prevent abusive conduct because they will require LOAs to be printed in fonts of sufficient size and be in readable type.⁸ MCI agrees with the National Association of Attorneys General that such disclosures -- appropriate in most circumstances -- are insufficient to remedy the LOA check problem. Consumers understand checks to be payments without condition and simply do not expect to be entering into service contracts whenever they cash checks made payable to them. Mandating the size or "readability" of text on LOA checks will not serve to remove this expectation among consumers.

AT&T's claim that MCI has changed its position on LOA check

⁶ "Careful, They've Got Your Number," Newsday, February 5, 1995, at A05.

⁷ AT&T Opposition, at 2.

⁸ Id. at 7.

payments is wrong and, in any event, is beside the point. In its initial comments, MCI urged the Commission not to adopt a rule forbidding all inducements on the same document as an LOA. By that, MCI meant that the LOA form itself should be able to contain marketing messages indicating to consumers that, by switching carriers, certain benefits, such as a primary interexchange carrier fee waiver, would be available.

Separately, MCI asked the Commission to adopt "narrowly-tailored rules" directed at known problems with carrier business practices, such as "LOAs in the form of an endorsement of checks or other negotiable instruments."⁹ This position also was reflected in subsequent MCI pleadings. Indeed, in its reply comments, MCI said that it supported a rule that would prohibit "LOAs in the form of an enforcement of checks or other negotiable instruments."¹⁰ This view was repeated in MCI's petition for reconsideration¹¹ and reiterated in its opposition to the petition by the National Association of Attorneys General.¹² It remains MCI's position.¹³

⁹ MCI Comments, at 8.

¹⁰ MCI Reply Comments, at 1-2.

¹¹ MCI Petition, at 1, 10-15.

¹² MCI Opposition, at 8-10.

¹³ AT&T has mischaracterized MCI's position on LOA checks by confusing it, perhaps unintentionally, with a position MCI advocated in its initial comments when MCI opposed the then-proposed rule that would have mandated, categorically, that inducements of any kind could not be written on the same document as LOAs. (The Commission subsequently did not adopt the proposal, but permitted LOAs on documents that could be "easily separable"

MCI itself has used LOA check payments in its marketing efforts in the past in response to competition. Despite its success in doing so, it now concludes that, on balancing all considerations, the public interest would be served if such a marketplace approach were removed altogether.¹⁴

CONCLUSION

For the reasons set forth herein and in MCI's reconsideration request, the Commission should eliminate by rule the use of LOA check payments in connection with LOAs.

Respectfully submitted,

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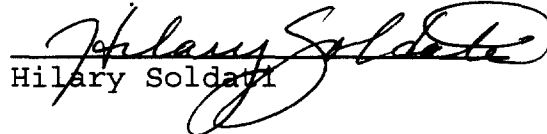
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from other material.) It was in response to the Commission's categorical proposal that MCI advocated that "a combined form can be formatted to eliminate customer confusion." (MCI Comments, at 13) As distinguished from the categorical proposal, MCI has supported a narrowly-tailored rule that would eliminate one specific type of "LOA in combination with an inducement," specifically, LOA check payments.

¹⁴ MCI Petition, at 15.

CERTIFICATE OF SERVICE

I, Hilary Soldati, hereby certify that the foregoing "Reply to Opposition" was served this 21st day of September, 1995 by mailing copies thereof, postage prepaid, to the following persons at the addresses listed below:


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